

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANICIA M. ROBINSON

Claimant

VS.

LIFE CARE CENTER OF OSAWATOMIE

Respondent

AND

TRAVELERS INSURANCE COMPANY

Insurance Carrier

Docket No. 1,007,783

ORDER

Respondent appeals the February 25, 2003 Preliminary Decision and February 27, 2003 Nunc Pro Tunc Preliminary Decision of Administrative Law Judge Robert H. Foerschler.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment?
- (2) Did claimant provide timely notice of accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be reversed.

Claimant alleges accidental injury on October 29, 2002, her second day on the job with respondent. Claimant spent the day before, October 28, 2002, in orientation, which did not involve working on the floor.

Claimant alleges on October 29, 2002, while attempting to transfer a patient, identified as Kevin, from his Geri chair into a bed, she heard a pop in her right knee.

Respondent contends this accident description is impossible. Kevin, a patient suffering from Huntington's chorea, was a large person. The medical condition Kevin suffered from made him very rigid, which made it impossible for one person to transfer Kevin alone. Kevin's transfer was always accomplished by at least two employees.

Claimant named several witnesses who allegedly were made aware of her injury and complaints. With the exception of the RN supervisor, Retha Ross, who did not testify, none of respondent's employees supported claimant's allegations of an injury. Kim Gade, the charge nurse, denied being made aware of any injury suffered by claimant on that date, even though she was working with claimant. Virginia Baird, the CNA working on that job who actually helped train claimant on October 29, 2002, denied any knowledge of claimant suffering an injury. Additionally, she testified claimant never appeared injured and never voiced any complaints to her about an injury.

Susan Bunce, the staffing supervisor, testified that there was never a report of injury provided to her. Additionally, she contradicted claimant's testimony that they were short-handed on October 29, which was claimant's justification for moving Kevin by herself. In fact, Ms. Bunce testified there was actually an additional certified nurse on that date, as claimant at that time was being trained. Ms. Bunce supported the testimony of Ms. Gade and Ms. Baird that claimant never voiced any complaints to her or notified her of any type of injury.

Finally, the affidavit of Jacquie Dozier was placed in the record at the preliminary hearing. Ms. Dozier, a certified medical assistant who worked with claimant from October 29 through claimant's termination on November 11, 2002, testified that claimant, at no time, provided any indication of any injury, or voiced any complaints, or requested any medical treatment for her knee.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ K.S.A. 44-520 obligates that notice of accident be provided to respondent within ten days of the accidental injury.²

In this instance, the Board finds that the overwhelming weight of the evidence contradicts claimant's allegations of an accidental injury to her knee on October 29, 2002. Additionally, the evidence does not support claimant's contention that she told several of respondent's employees of her symptoms and her need for medical treatment.

¹ K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

² K.S.A. 44-520.

The Board, therefore, finds claimant has failed in her burden of proving that she suffered accidental injury arising out of and in the course of her employment or that she provided timely notice of accident to respondent as required. The Board, therefore, finds the Order of the Administrative Law Judge granting claimant benefits, including a medical opinion as to the origin of claimant's accident, should be reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 25, 2003 Preliminary Decision and the February 27, 2003 Nunc Pro Tunc Preliminary Decision of Administrative Law Judge Robert H. Foerschler, should be, and are hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Randall W. Schroer, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Director, Division of Workers Compensation